

**United States Department of Labor
Employees' Compensation Appeals Board**

J.H., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Clintwood, VA, Employer**

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**Docket No. 15-1385
Issued: October 27, 2015**

Appearances:

Appellant, pro se

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On June 8, 2015 appellant filed a timely appeal from a February 23, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant received a \$5,187.62 overpayment of compensation for the period December 18, 2010 to January 11, 2014; (2) whether the overpayment is subject to waiver of recovery; and (3) whether OWCP properly withheld \$100.00 from appellant's continuing compensation payments.

¹ 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

OWCP accepted that on October 8, 2009 appellant, then a 52-year-old rural carrier, sustained a lumbar sprain while removing a parcel from his postal vehicle. Appellant stopped work on October 9, 2009 and did not return. He received compensation commencing on December 18, 2009.

A grievance settlement resulted in a pay increase retroactive to April 25, 2009. Appellant contended in an August 3, 2010 letter that OWCP erred by failing to deduct his life insurance premiums.

OWCP placed appellant's case on the periodic rolls effective August 29, 2010. Appellant separated from the employing establishment effective December 18, 2010.²

On September 24, 2011 appellant signed a form electing to continue his postretirement basic life insurance coverage, with no reduction in benefits, under Federal Employee Group Life Insurance (FEGLI) as a compensationer. He elected Option A, four multiples of Option B, and Option C.

In September 20 and November 6, 2012 letters, appellant requested that OWCP correct his pay rate retroactively to December 18, 2009. He explained that OWCP based his compensation benefits on a \$54,011.00 annual salary, but provided an employing establishment personnel action form showing a \$60,978.00 annual salary effective April 25, 2009.

In an August 6, 2013 letter, the Office of Personnel Management advised OWCP that appellant's FEGLI was based on an annual salary of \$53,102.00. It instructed OWCP not to reduce appellant's postretirement life insurance benefits effective December 19, 2010.

In an October 28, 2013 memorandum, OWCP noted that from December 18, 2009 to October 19, 2013, appellant was issued \$136,194.38 in compensation based on an annual pay rate of \$53,739.00. However, he should have been paid \$162,769.63 based on an annual salary of \$60,978.00. OWCP calculated that appellant was owed \$26,575.25, and issued a supplemental payment for this amount on October 28, 2013.

In an April 18, 2014 memorandum, OWCP noted that it had not deducted postretirement basic life insurance premiums from appellant's compensation for the period December 18, 2010 to January 11, 2014. It calculated that for this period, it should have deducted \$5,187.62 in postretirement basic life insurance premiums from appellant's compensation payments.

By notice dated April 18, 2014, OWCP advised appellant of its preliminary determination that he had received a \$5,187.62 overpayment of compensation because postretirement basic life insurance premiums were not deducted from his compensation payments covering the period December 18, 2010 to January 11, 2014. It provided a calculation of the overpayment, noting that he was not at fault in its creation. OWCP requested that appellant provide financial information within 30 days or indicate if he contested that an overpayment occurred.

² Appellant elected to receive compensation by direct deposit effective May 28, 2013.

Appellant signed an overpayment action request on May 10, 2014, requesting a telephonic prercoupmnt hearing. He contended that the overpayment occurred through no fault of his own and requested waiver. Appellant noted that he advised OWCP several times in 2010 of the irregularities in his base salary rate and life insurance premium deductions.

Appellant completed and signed an overpayment recovery questionnaire (Form OWCP-20) on May 10, 2014. He noted that he lived with his wife and one adult child, and supported another adult child. Appellant listed monthly household income of \$3,424.51, comprised of his compensation payments and \$299.00 a month in his spouse's social security benefit payments. He noted assets of \$1,341.50 in cash and bank accounts, noting that he had funds in a Thrift Savings Plan and "a few years of EE Savings Bonds." Appellant listed monthly expenses totaling \$3,365.00: \$1,200.00 for mortgage; \$175.00 for property tax; \$1,200.00 for food; \$200.00 for clothing; \$490.00 for utilities; \$1,300.00 in miscellaneous expenses. He provided financial documentation of his assets, income, and expenses, including \$140.00 for cell phone plans. Appellant also submitted several letters reiterating that he warned OWCP several times that it had underdeducted life insurance premiums. He also contended that repayment of the overpaid compensation would cause significant financial hardship.

OWCP conducted a telephonic prercoupmnt hearing on December 4, 2014. At the hearing, appellant explained that he did not have funds to repay the overpaid compensation. He noted that he had \$20,000.00 in a Thrift Savings Plan account. Appellant reiterated that OWCP failed to heed his letters regarding the under deduction of his life insurance premiums prior to December 2010. After the hearing, he submitted his December 30, 2014 statement repeating his arguments at the hearing.

By decision dated February 23, 2015, OWCP finalized that appellant had received an overpayment of compensation in the amount of \$5,187.62 for the period December 18, 2010 to January 11, 2014 as no postretirement basic life insurance was deducted from his compensation payments. It found that he was not at fault in the creation of the overpayment, but that the overpayment was not subject to waiver. OWCP allowed the enumerated expenses except for the \$140.00 in cell phone payments. It noted that in any event, the \$3,365.00 in monthly expenses was below the \$3,687.72 in monthly household income, leaving \$322.72 in discretionary income. OWCP also noted that appellant's retirement account balance of \$20,000 exceeded the household resource threshold of \$8,000.00, making the overpayment ineligible for waiver. It directed recovery by deducting \$100.00 every 28 days from appellant's continuing compensation payments.

LEGAL PRECEDENT -- ISSUE 1

FECA provides that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of his or her duty.³ When an overpayment has been made to an individual because of an error of fact or law,

³ 5 U.S.C. § 8102(a).

adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which the individual is entitled.⁴

Under FEGLI, most civilian employees of the Federal Government are eligible to participate in basic life insurance and one or more of the options.⁵ The coverage for basic life insurance is effective unless waived⁶ and the premiums for basic and optional life coverage are withheld from the employee's pay.⁷ When an under withholding of life insurance premiums occurs, the entire amount is deemed an overpayment because OWCP must pay the full premium to OPM upon discovery of the error.⁸

At separation from the employing establishment, FEGLI insurance will either terminate or be continued under compensationer status.⁹ If the compensationer chooses to continue basic life insurance and optional life insurance coverage, the schedule of deductions made while the compensationer was an employee will be used to withhold premiums from his or her compensation payments.¹⁰ Thus, while receiving disability compensation in lieu of retirement benefits, the former employee is responsible for all insurance premiums.¹¹

ANALYSIS -- ISSUE 1

The employing establishment separated appellant effective December 18, 2010. The record reflects that OPM notified OWCP of appellant's election of basic life insurance and postretirement basic life insurance FEGLI options for the period on and after September 24, 2011. However, OWCP did not implement this election until January 12, 2014. It calculated the amount of the resulting overpayment to be \$5,187.62.

As OWCP did not receive timely notice of his election, it under withheld insurance premiums in the amount of \$5,187.62. The Board finds that OWCP properly determined the fact and the amount of overpayment. The Board also notes that appellant does not contest the fact or amount of the overpayment.

LEGAL PRECEDENT -- ISSUE 2

Section 8129(a) of FECA provides that when an overpayment of compensation occurs because of an error of fact or law, adjustment or recovery shall be made by decreasing later

⁴ *Id.* at § 8129(a).

⁵ *Id.* at § 8702(a).

⁶ *Id.* at § 8702(b).

⁷ *Id.* at § 8707.

⁸ *Id.* at § 8707(d). See *Keith H. Mapes*, 56 ECAB 130 (2004); *James Lloyd Otte*, 48 ECAB 334 (1997).

⁹ 5 C.F.R. § 870.501.

¹⁰ *Id.* at § 872.410, subpart D.

¹¹ V.B., Docket No. 15-157 (issued March 16, 2015); *Scherri L. Stanley*, 53 ECAB 433 (2002).

payment to which the individual is entitled.¹² The only exception to this requirement that an overpayment must be recovered is set forth in section 8129(b).

Adjustment or recovery by the United States may not be made when incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience.

Thus, a finding that appellant was without fault is insufficient, in and of itself, for OWCP to waive the overpayment. OWCP must exercise its discretion to determine whether recovery of the overpayment would defeat the purpose of FECA or would be against equity and good conscience, pursuant to the guidelines provided in the implementing federal regulations.

Section 10.436 of the implementing regulations¹³ provide that recovery of an overpayment will defeat the purpose of FECA if recovery would cause hardship to a currently or formerly entitled beneficiary such that: (a) the beneficiary from whom OWCP seeks recovery needs substantially all of his or her current income, including compensation benefits, to meet current ordinary and necessary living expenses; and (b) the beneficiary's assets do not exceed the resource base of \$4,800.00 for an individual.¹⁴ An individual is deemed to need substantially all of his or her current income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00. In other words, the amount of monthly funds available for debt repayment is the difference between current income and adjusted living expenses (*i.e.*, ordinary and necessary living expenses) plus \$50.00.¹⁵

Recovery of an overpayment is considered to be against equity and good conscience when any individual, in reliance on such payments or on notice that such payments would be made, gives up a valuable right or changes his position for the worse.¹⁶ Conversion of the overpayment into a different form, such as food, consumer goods, real estate, etc., from which the claimant derived some benefit, is not to be considered a loss.¹⁷ The individual who received the overpayment is responsible for providing information about income, expenses, and assets as specified by OWCP. This information is needed to determine whether or not recovery of an overpayment would defeat the purpose of FECA or be against equity and good conscience. This information will also be used to determine the repayment schedule, if necessary.¹⁸

¹² *Id.* at § 8129(a).

¹³ 20 C.F.R. § 10.436.

¹⁴ *Id.* Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6.a(1)(b) (October 2004).

¹⁵ *Id.*

¹⁶ *Id.* at § 10.437(b).

¹⁷ Federal (FECA) Procedure Manual, *see supra* note 10, Chapter 6.200.6.b(3) (October 2004). C.P., Docket No. 14-975 (issued September 11, 2014).

¹⁸ 20 C.F.R. § 10.438(a); *Ralph P. Beachum, Sr.*, 55 ECAB 442 (2004).

ANALYSIS -- ISSUE 2

OWCP found that appellant was not at fault in creating the overpayment of compensation and considered whether he was entitled to waiver of recovery. Waiver is only possible if recovery would defeat the purpose of FECA or would be against equity and good conscience. In order to establish that repayment of the overpayment would defeat the purpose of FECA, appellant must show that he requires substantially all of his income to meet current ordinary and necessary living expenses and that his assets do not exceed the established limit as determined by OWCP's procedures.¹⁹

OWCP determined that appellant's income exceeded his expenses by \$322.72 a month. This exceeded the \$50.00 allowance specified in OWCP's implementing regulations, demonstrating that appellant did not need substantially all of his income for ordinary and necessary living expenses.²⁰ As his income exceeded his allowable expenses by more than the amount specified, he has not established that recovery would defeat the purpose of FECA.

Additionally, the evidence does not demonstrate that repayment of the overpayment would be against equity and good conscience. Appellant submitted no argument that he relied upon the incorrect payments to his detriment or that he would experience severe financial hardship attempting to repay the debt. Consequently, OWCP properly denied waiver of recovery of the overpayment.

On appeal, appellant requests waiver of recovery due to financial hardship, emphasizing that he was not at fault. As stated, the financial information appellant submitted demonstrates that the overpayment was not eligible for waiver. Appellant also contends that OWCP created the overpayment by failing to respond promptly to his repeated advisements of an under deduction of life insurance premiums. However, the fact that a claimant is without fault in creating an overpayment does not preclude OWCP from recovering all or part of the overpayment.²¹

LEGAL PRECEDENT -- ISSUE 3

The Board's jurisdiction over recovery of an overpayment is limited to reviewing those cases where OWCP seeks recovery from continuing compensation under FECA. Section 10.441(a) of the regulations provide:

When an overpayment has been made to an individual who is entitled to further payments, the individual shall refund to OWCP the amount of the overpayment as soon as the error is discovered or his or her attention is called to same. If no refund is made, OWCP shall decrease later payments of compensation, taking into account the probable extent of future payments, the rate of compensation, the

¹⁹ *Id.* at § 10.436.

²⁰ *Id.*

²¹ See *George A. Rodriguez*, 57 ECAB 224 (2005); *Joyce O. Diaz*, 51 ECAB 124 (1999).

financial circumstances of the individual and any other relevant factors, so as to minimize any hardship.²²

ANALYSIS -- ISSUE 3

OWCP reduced appellant's future compensation benefits by \$100.00 per month taking into account the amount of the compensation and the financial circumstances of appellant to minimize hardship, as well as the factors set forth in section 10.441. It found that this method of recovery would minimize any resulting hardship on him. The Board finds that OWCP properly required repayment of the overpayment by deducting \$100.00 from appellant's ongoing compensation payments every four weeks.

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$5,187.61 for the period December 18, 2010 to January 11, 2014. The Board also finds that OWCP properly denied waiver of the overpayment. The Board further finds that OWCP properly required recovery of the overpayment by deduction \$100.00 from appellant's continuing compensation payments every 28 days,

²² 20 C.F.R. § 10.441.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 23, 2015 is affirmed.

Issued: October 27, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board